

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

LARRY GOODINE, JR.,

PLAINTIFF,

VERSUS

CIVIL ACTION NO. 1:95CV34-S-D

CITY OF BOONEVILLE, MISSISSIPPI,
GOBE GEORGE, JACKIE FIELDS,
REGINALD FIELDS, LEROY BROOKS,
WILLIE SHINAULT, JR., RAYMOND
JUSTICE, and REV. ROBERT SWINNEY,

DEFENDANT.

MEMORANDUM OPINION

This cause of action is before the court on several motions filed by the defendants. The City of Booneville has made a motion to dismiss and has joined in Defendant Swinney's motion to dismiss, or alternatively, for summary judgment. The individual defendants, Jackie Fields, Reginald Fields, Leroy Brooks, Willie Shinault, Jr., and Raymond Justice have filed a motion to dismiss, or in the alternative, for summary judgment. Finally, since the discovery in this case has been stayed pending the determination of the issue of Swinney's qualified immunity defense, the city has moved to continue the trial, postpone the pretrial conference, and suspend all pending deadlines.

During argument on these motions, the plaintiff admitted that all of his state law claims were barred by the applicable statutes of limitation. The defendants conceded that there was a genuine

issue of material fact whether the three-year statute of limitation had expired on the plaintiff's § 1983 cause of action.

I. Qualified Immunity

The plaintiff was employed as a minister of the Springhill Baptist Church. After a dispute arose between the plaintiff and a group of deacons, Robert Swinney is alleged to have requested that Chief of Police Kitchens investigate the plaintiff. Swinney was at the time of this incident an alderman for the City of Booneville. A computer search of the plaintiff's criminal history was conducted by the police, and later it was allegedly disseminated to several of the defendants. The plaintiff alleges that Swinney and at least one of the other deacons, who were on the pulpit selection committee when the plaintiff was interviewed for the minister position, had been informed of his previous criminal record and that the request of the police was made in order to raise public ridicule and, thus, drive him from his position as minister.

The deacons escorted the plaintiff to the police station to confront him with the NCIC report. The NCIC report indicated that the subject individual had two tattoos which the plaintiff showed that he did not have. The plaintiff was then allowed to leave. The plaintiff alleges that such actions constitute an unconstitutional arrest, an intentional invasion of his privacy rights, and a violation of the establishment clause.

Law enforcement officers are protected from personal monetary liability so long as their actions do not violate "clearly established [federal] statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); see also Anderson v. Creighton, 483 U.S. 635 (1987). This standard turns on the "objective legal reasonableness" of the official's conduct. Id. The objective reasonableness standard thus "provides ample protection to all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341 (1986).

The Supreme Court recently "clarif[ied] the analytical structure under which a claim of qualified immunity should be addressed." We must first determine whether the plaintiff has "allege[d] the violation of a clearly established constitutional right." If he has, we then decide whether the defendant's conduct was objectively reasonable, because "[e]ven if an official's conduct violates a constitutional right, he is entitled to qualified immunity if the conduct was objectively reasonable."

Spann v. Rainey, 987 F.2d 1110, 1114 (5th Cir. 1993) (internal citations omitted). The court finds there to be genuine issues of material fact as to whether Swinney's actions were objectively reasonable. Accordingly, at this stage, Swinney's motion for summary judgment on the issue of qualified immunity is not well taken. Additionally, it is appropriate that the stay be lifted to allow limited discovery by the parties.

II. Privacy Interest and Non-state Actors

All of the defendants have argued that summary judgment is appropriate because the plaintiff does not have a privacy interest in the contents of the NCIC report. The deacons have argued that the plaintiff has not alleged sufficient nexus between their conduct and the action of the state actors to bring them under the purview of 42 U.S.C. § 1983. At this stage, the court will reserve ruling on these motions. Once the plaintiff has had an opportunity to conduct limited discovery and has amended his complaint to clearly articulate his constitutional claims, the defendants are directed to supplement their motions.

An order in accordance with this memorandum shall be issued.

This _____ day of January, 1996.

CHIEF JUDGE